

Assembly Bill No. 2473

Passed the Assembly August 20, 2014

Chief Clerk of the Assembly

Passed the Senate August 19, 2014

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2014, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 31564, 31592.2, 31592.4, 31649.5, 31656, 31671, 31691, 31691.1, and 31696.3 of, and to add Sections 31485.19, 31485.20, 31485.21, 31485.22, 31694.6, and 31698.5 to, the Government Code, relating to county employees.

LEGISLATIVE COUNSEL'S DIGEST

AB 2473, Committee on Public Employees, Retirement and Social Security. County Employees Retirement Law of 1937: federal law compliance.

Federal tax law regulates pension plans generally and regulates public pension plans specifically based on their status as governmental plans, as defined. In this regard, among other things, federal law requires that accrued member retirement benefits be nonforfeitable, as specified, establishes conditions for the distribution of funds to members from a retirement system, prescribes requirements for the vesting of benefits, and limits the application of pension funds for medical benefits.

The County Employees Retirement Law of 1937 (CERL) permits counties and districts, as defined, to provide retirement benefits to their employees pursuant to its provisions and vests the management of the retirement system in the board of retirement. CERL generally conditions distribution of benefits upon compliance with federal requirements. CERL requires a county to retain in its retirement fund specified excess earnings to maintain a reserve against possible future deficiencies in earnings, and to transfer certain of those excess earnings into county advance reserves for the sole purpose of paying the cost of benefits, as specified. CERL authorizes the use of these reserves for the payment of certain health and medical benefits, subject to specified limitations.

This bill would revise various provisions of CERL to explicitly conform with federal law. In this regard, the bill would provide that a member's accrued retirement benefits are nonforfeitable in accordance with federal law in effect on the date of the termination of, or discontinuance of contributions under, the retirement system. Upon the withdrawal of a district from a retirement system, the

bill also would prohibit a refund, distribution, or transfer of contributions or other funds to an employee or district unless in compliance with prescribed federal law.

This bill would revise provisions authorizing a retirement system to apply specified earnings to designated health benefits provided federal requirements are met, and would allow the board of retirement to authorize payment of those benefits with county advance reserves. The bill would specify that, if a county establishes a Post-Employment Benefits Trust Account as a part of its retirement fund, that account shall be used exclusively to provide health benefits for retired members, their spouses, and dependents.

This bill would revise county procedures applicable to providing service credit to a member of the retirement system for all or part of his or her military service, in accordance with federal law.

This bill would require a county that elects to provide optional long-term care or vision benefits, to comply with applicable federal law and regulation, including maintaining separate trust funds for those benefits. The bill also would make various technical, nonsubstantive changes to CERL.

The people of the State of California do enact as follows:

SECTION 1. Section 31485.19 is added to the Government Code, to read:

31485.19. Notwithstanding any other provision of this chapter, the rights of each member to his or her accrued retirement benefits under the retirement system shall be nonforfeitable, in accordance with the requirements of Sections 401(a) of Title 26 of the United States Code that are applicable to public employee plans, to the extent then funded, on the date of the termination of the system, the partial termination of the system, or the complete discontinuance of contributions under the system, as provided in Title 26 of the United States Code.

SEC. 2. Section 31485.20 is added to the Government Code, to read:

31485.20. Notwithstanding any other provision of this chapter, no amount shall be distributed from a retirement system established under this chapter prior to the time that the distribution may be made in compliance with the requirements of Section 401(a) of

Title 26 of the United States Code that are applicable to public employee plans, including, but not limited to, requirements relating to the distribution of amounts prior to the earlier of a member's death, disability, separation from service with all employers that maintain the retirement system, or attainment of normal retirement age, as defined by the retirement system.

SEC. 3. Section 31485.21 is added to the Government Code, to read:

31485.21. (a) A member who has not attained normal retirement age shall have a bona fide separation from service to the extent required by Section 401(a) of Title 26 of the United States Code before working for the county or a district. The board shall establish, by regulation, the criteria under which a bona fide separation is satisfied.

(b) Notwithstanding any other provision of this chapter, to the extent required or permitted by Section 401(a) of Title 26 of the United States Code, no amount shall be paid to any member before the date the member has attained normal retirement age or has had a bona fide separation from service, whichever is earlier.

(c) The board may establish, by regulation, normal retirement age consistent with federal law and eligibility requirements under state law.

(d) To the extent that the California Public Employees' Pension Reform Act of 2013 (Article 4 (commencing with Section 7522) of Chapter 21 of Division 7 of Title 1) would provide for greater restrictions with regard to separation from service, the provisions of that act shall prevail.

SEC. 4. Section 31485.22 is added to the Government Code, to read:

31485.22. (a) A member who, while currently employed, has reached normal retirement age, as defined by the retirement system, and has met the benefit commencement requirements in Article 8 or Article 9, shall be fully vested in the benefits payable under the retirement system. Upon satisfying the requirements of this section, a member may be retired upon filing with the board a written application in the manner provided in Articles 8 and 9 of this chapter, as applicable.

(b) Notwithstanding subdivision (a), Articles 8 and 9 of this chapter, or any other applicable law, a member's earned and

accrued benefits may be forfeited under Section 7522.70, 7522.72, or 7522.74.

SEC. 5. Section 31564 of the Government Code is amended to read:

31564. (a) All officers and employees of any district who have become members of the association as provided in Section 31557, may be withdrawn by a resolution of the governing body declaring all of the district's employees withdrawn from the association; provided, the governing body has first received a written petition signed by a majority of its officers and employees requesting that the district's officers and employees be withdrawn from the association.

(b) Upon the adoption of any resolution to withdraw its members, all accumulated contributions held in the association shall be refunded to the district's employees upon the effective date of their withdrawal and in the same manner as the accumulated contributions would be refunded upon the termination of their employment by the district.

(c) Upon the adoption of any resolution to withdraw its members and where there are no existing retirees from the district, the district's contributions shall be transferred to another public retirement system that meets the requirement of a tax-qualified retirement plan under Section 401(a) of Title 26 of the United States Code.

(d) A refund, distribution, or transfer of contributions or other funds shall not be made to any employee or any district unless that action complies with the requirements of Section 401(a) of Title 26 of the United States Code.

(e) In the event of the transfer of district contributions to another public retirement system, the employee contributions shall also be transferred to the other public retirement system.

(f) The effective date of withdrawal of any resolution adopted pursuant to this section shall be at the end of the calendar month during which such resolution is adopted.

SEC. 6. Section 31592.2 of the Government Code is amended to read:

31592.2. (a) In any county, earnings of the retirement fund during any year in excess of the total interest credited to contributions and reserves during such year shall remain in the fund as a reserve against deficiencies in interest earnings in other

years, losses on investments, and other contingencies, except that, when such surplus exceeds 1 percent of the total assets of the retirement system, the board may transfer all, or any part, of such surplus in excess of 1 percent of the said total assets into county advance reserves for the sole purpose of payment of the cost of the benefits described in this chapter.

(b) Where the board of supervisors has provided for the payment of all, or a portion, of the premiums, dues, or other charges for health benefits, Medicare, or the payment of accrued sick leave at retirement to or for all, or a portion, of officers, employees, and retired employees and their dependents, from the county general fund or other sources, the board of retirement may authorize the payment of all, or a portion, of payments of the benefits described in this subdivision from the county advance reserves. This payment shall comply with the requirements of Section 401 of Title 26 of the United States Code. Payment may be made directly from the county advance reserves for the benefits described in Section 31691.1.

SEC. 7. Section 31592.4 of the Government Code is amended to read:

31592.4. (a) The amount of excess earnings available at the end of a fiscal year of the retirement fund, shall, subject to the limitations in this section, be treated in the immediately succeeding fiscal year, for all purposes under this chapter, as appropriations, transfers, and contributions made to the retirement fund by the county and applicable districts. That treatment shall occur only to the extent that, in the immediately succeeding fiscal year, the county and applicable districts pay for an equal amount of health benefits for members heretofore or hereafter retired and their dependents or make contributions in an equal amount to an account established under Section 401(h) of Title 26 of the United States Code solely for the purpose of providing health benefits for retired members, their spouses, and dependents, and for the associated administrative and investment expenses.

(b) For purposes of this section, “excess earnings” means earnings of the retirement fund at the end of any fiscal year that exceed the total interest credited to contributions and reserves plus 1 percent of the total assets of the retirement fund.

(c) The board of supervisors or the board of retirement shall take any actions necessary and appropriate to ensure that the

program provided by this section complies with all applicable federal and state income tax laws, including, but not limited to, establishing rules and procedures for establishing and maintaining an account under Section 401(h) of Title 26 of the United States Code.

(d) In accordance with Section 401(h) of Title 26 of the United States Code and Section 1.401-14(c) of the Code of Federal Regulations:

(1) The retirement system shall specify the medical benefits that will be available and shall set out the amount that will be paid.

(2) Medical benefits shall be subordinate to the retirement benefits when added to any life insurance benefits.

(3) A separate account shall be maintained for contributions to fund the medical benefits.

(4) The funds in the separate account may be invested with the funds for retirement benefits and the earnings shall be allocated to each account in a reasonable manner.

(5) Amounts contributed for medical benefits shall be reasonable and ascertainable.

(6) No part of the medical benefits account may be used for or diverted to any purpose other than providing medical benefits and paying necessary or appropriate expenses for the administration of the medical benefits account.

(7) Any amounts remaining in the medical benefits account after satisfaction of all medical benefits liabilities for all members, their spouses, and dependents shall be returned to the employer.

(8) If a member's interest in the medical benefits account is forfeited prior to plan termination, an amount equal to the forfeiture shall reduce employer contributions to fund the account.

(e) Except to the extent allowed by Sections 401 and 420 of Title 26 of the United States Code, and related federal regulations, assets shall not be transferred or otherwise paid from the funds held by the retirement system for retirement benefits to a medical benefits account. Assets shall not be transferred or otherwise paid from a medical benefits account to the funds held by the retirement system for retirement benefits.

(f) This section shall not be operative in any county until the board of supervisors and the board of retirement of the county, by resolution adopted by a majority vote of each board, make this section operative in the county.

(g) This section is not intended, and shall not be construed to, affect the validity of any agreement entered into by a county and a retirement association whereby a county has agreed to provide and fund a health insurance program for retired employees and their dependents for hospital services, medical services, dental services, and optical services, prior to the effective date of this section.

(h) This section establishes a method of providing health benefits for retired members, their spouses, and dependents to the extent allowed under Sections 31592.2 and 31691. This section does not authorize duplicate benefits.

(i) This section may be made applicable in any county that has adopted Article 5.5 (commencing with Section 31610), in which case the Supplemental Retiree Benefits Reserve shall be substituted for the excess earnings described in this section. This section also may be made applicable to any arrangement established under Article 8.6 (commencing with Section 31694).

SEC. 8. Section 31649.5 of the Government Code is amended to read:

31649.5. Notwithstanding Section 31649, any member who resigned, or obtained a leave of absence, to enter and did enter the Armed Forces of the United States on a voluntary or involuntary basis and returned to county service within one year after separation therefrom, under honorable conditions, shall receive credit for service and prior service for all or any part of his or her military service, if, before retirement from the county, he or she contributes what he or she would have paid to the fund based on his or her compensation earnable pursuant to Section 31461 at the time he or she resigned or received the leave of absence, together with regular interest thereon, and if, when he or she contributes, the military service is not a basis for present or future military retirement pay.

SEC. 9. Section 31656 of the Government Code is amended to read:

31656. Nothing in this chapter shall be construed to prohibit any district established pursuant to Part 4 (commencing with Section 40000) of Division 10 of the Public Utilities Code, from extending retirement service credit pursuant to Section 40127 of the Public Utilities Code to any employee of the district who is on an authorized leave of absence to serve as an official of a

recognized employee bargaining unit, under all of the following conditions:

(a) The employee agrees to pay the total contributions that would otherwise be paid if the employee were not on leave, as well as any additional costs which may accrue to the system as a result of this extension of coverage.

(b) The maximum service credit accumulated under this section shall not exceed 12 years.

(c) Employees covered under this section shall not be eligible for disability benefits under any public employees' retirement system in this state while on such leave of absence.

This section shall not be operative in any county until such time as the board of supervisors shall, by resolution adopted by majority vote, make the provisions of this section applicable in the county.

SEC. 10. Section 31671 of the Government Code is amended to read:

31671. (a) The amount of compensation that is taken into account in computing benefits payable to any person who first becomes a member of the retirement system on or after July 1, 1996, or January 1, 1996, for systems operating on a calendar basis, shall not exceed the limitations in Section 401(a)(17) of Title 26 of the United States Code upon public retirement systems, as that section may be amended from time to time and as that limit may be adjusted by the Commissioner of Internal Revenue for increases in cost of living. The determination of compensation for each 12-month period shall be subject to the annual compensation limit in effect for the calendar year in which the 12-month period begins. In a determination of average annual compensation over more than one 12-month period, the amount of compensation taken into account for each 12-month period shall be subject to the applicable annual compensation limit.

(b) The compensation limitations specified in Section 7522.10 shall also apply to a member who is subject to the provisions of the California Public Employees' Pension Reform Act of 2013 for all or any portion of his or her membership in the county retirement system.

SEC. 11. Section 31691 of the Government Code is amended to read:

31691. (a) The board of supervisors of any county by ordinance, or the governing body of any district under the County

Employees Retirement Law, by ordinance or resolution, may provide for the contribution by the county or district from its funds and not from the retirement fund, toward the payment of all or a portion of the premiums on a policy or certificate of life insurance or disability insurance issued by an admitted insurer, or toward the payment of all or part of the consideration for any hospital service or medical service corporation, including any corporation lawfully operating under Section 9201 of the Corporations Code, contract, or for any combination thereof, for the benefit of any member heretofore or hereafter retired or his or her dependents. At least one of these plans shall include free choice of physician and surgeon.

(b) The benefits provided by this section are in addition to any other benefits provided by this chapter.

(c) The board of retirement may provide on behalf of a member who has retired, or an eligible surviving spouse who was married to the member for one year prior to the date of retirement of the member, or, if there is no such spouse, the surviving unmarried children of the member who are under 18 years of age, or under 22 years of age and full-time students, for the hospital and medical benefits enumerated in subdivision (a) from the earnings of the retirement fund that are in excess of the total interest credited to contributions and reserves plus 1 percent of the total assets of the retirement fund. The board may provide for the benefits enumerated from like sources when the board of supervisors or the governing body of a district has elected to provide these benefits to its active employees, even though the benefits are not provided to those who have retired from the service of the county or district. Hospital and medical benefits provided under this section shall be provided in compliance with Section 401(h) of Title 26 of the United States Code. They may also be provided in compliance with Section 31592.2.

(d) Except in a county of the first class, upon adoption by any county providing benefits pursuant to this section, that has adopted Article 5.5 (commencing with Section 31610), the Supplemental Retiree Benefits Reserve established pursuant to Section 31618 shall be substituted for the excess earnings described in subdivision (c).

SEC. 12. Section 31691.1 of the Government Code is amended to read:

31691.1. (a) In lieu of the benefits prescribed by Section 31691, the board of retirement may provide on behalf of a member who has retired, or an eligible surviving spouse who was married to the member prior to the date of retirement of the member, or, if there is no such spouse, the surviving unmarried children of the member who are under 18 years of age, or under 22 years of age and full-time students, for an equivalent increase in allowance from the earnings of the retirement fund that are in excess of the total interest credited to contributions and reserves plus 1 percent of the total assets of the retirement fund. Any benefit provided by this section shall be subject to Section 31692.

(b) Except in a county of the first class, upon adoption by any county providing benefits pursuant to this section that has adopted Article 5.5 (commencing with Section 31610), the board of retirement shall, instead, pay those benefits from the Supplemental Retiree Benefits Reserve established pursuant to Section 31618.

SEC. 13. Section 31694.6 is added to the Government Code, to read:

31694.6. (a) Notwithstanding any provision to the contrary in this article, if the Post-Employment Benefits Trust Account established under Section 31694 is established as a part of the retirement fund, then that account shall be established for the sole purpose of providing health benefits for retired members, their spouses, and dependents, and shall comply with all requirements, including the limitations on contributions, of Section 401(h) of Title 26 of the United States Code, as applicable.

(b) The board of supervisors or the board of retirement shall take any actions necessary or appropriate to ensure that the program provided by this section complies with all applicable federal and state income tax laws, including, but not limited to, establishing rules and procedures for establishing and maintaining an account under Section 401(h) of Title 26 of the United States Code.

(c) If the Post-Employment Benefits Trust Account is established under Section 31694, assets shall not be transferred or otherwise paid from the funds held by the retirement system for retirement benefits to a medical benefits account. Assets shall not be transferred or otherwise paid from a medical benefits account to the funds held by the retirement system for retirement benefits.

SEC. 14. Section 31696.3 of the Government Code is amended to read:

31696.3. (a) The board shall establish a trust fund designated as the Long-Term Care Fund for the purpose of the payment of the costs and administration of the long-term care plan. The Long-Term Care Fund shall be held for the exclusive benefit of enrollees and the payment of the costs and administration of the program.

(b) The board shall have exclusive control of the administration and investment of the Long-Term Care Fund, except that in a county having a board of investments, the board of investments shall have exclusive control of the investment of the fund. Funds in the Long-Term Care Fund shall be invested pursuant to the law governing the investment of the retirement fund.

(c) Income, of whatever nature, earned on the Long-Term Care Fund shall be credited to the fund.

(d) If the Long-Term Care Fund is intended to be a part of the retirement system trust fund, then the operation of the Long-Term Care Fund, including, but not limited to, its funding, governance, investment of assets, allocation of income, and payment of benefits, shall comply with the requirements of Section 401(h) of Title 26 of the United States Code, to the extent required by that title and related federal regulations. If the Long-Term Care Fund is intended to be separate from and not a part of the retirement system, then no assets attributable to that fund shall be commingled for investment or any other purpose, with the assets of the retirement system and shall constitute a separate fund with a trust that is separate from the funds and trust of the retirement system to the extent commingling of assets for investment purposes satisfies the requirements of the federal tax laws. The board shall indicate, as a part of establishment of the Long-Term Care Fund, whether the separate fund is intended to be a part of, or separate from, the retirement system.

SEC. 15. Section 31698.5 is added to the Government Code, to read:

31698.5. If the vision care program is intended to be part of the retirement system trust fund, then the operation of the vision care program, including, but not limited to, its funding, governance, investment of assets, allocation of income, and payment of benefits, shall comply with the requirements of Section 401(h) of Title 26 of the United States Code, to the extent required by that title, and related federal regulations. If the vision care program is intended

to be separate from and not a part of the retirement system, then no assets attributable to that program shall be commingled for investment, or any other purpose, with the assets of the retirement system. Assets attributable to the program shall constitute a separate fund with a trust that is separate from the funds and trust of the retirement system except to the extent that the commingling of assets for investment purposes satisfies the requirements of the federal tax laws. The sponsor of the vision care program shall indicate as part of the establishment of the program whether that separate fund is intended to be a part of, or separate from, the retirement system.

Approved _____, 2014

Governor